

UNITED STATES DISTRICT COURT

for the
Southern District of Texas
McAllen Division

)	Case No. _____
)	
JAVIER RICARDO ROJAS and)	
MARIA DELILA ROJAS)	
<i>Plaintiffs</i>)	Jury Trial: [X] Yes [] No
)	
-v-)	
)	
THE BANK OF NEW YORK MELLON)	
TRUST COMPANY, N.A., AS TRUSTEE)	
ON BEHALF OF CWABS ASSET-)	
BACKED CERTIFICATES TRUST 2007-12))	
And CARRINGTON MORTGAGE)	
SERVICES, LLC)	
<i>Defendants</i>)	

COMPLAINT FOR WRONGFUL FORECLOSURE

I. The Parties to This Complaint

A. The Plaintiffs

Name	Javier Ricardo Rojas and Maria Delila Rojas
Street Address	7511 N. FM 88
City and County	Weslaco, Hidalgo County
State and Zip Code	Texas 78599
Telephone Number	(956) 463-3717
Email Address	delilarojas@hotmail.com

B. The Defendants

Name	The Bank of New York Mellon Trust Company
Street Address	Registered Agent, CT Corporation 1999 Bryan Street, Suite 900 Dallas, Texas 75201-3136; and
 Name	 Carrington Mortgage Services, LLC
Street Address	Registered Agent, CT Corporation 1999 an Street, Suite 900 Dallas, Texas 75201-3136.

II. Basis for Jurisdiction

This action is brought for wrongful foreclosure based on diversity of citizenship. Defendants are respectively a Delaware Corporation and a California Corporation while Plaintiffs are individuals residing in Texas.

III. Statement of Complaint

This suit is to enjoin and restrain a foreclosure sale posted under an unlawful declaration of default and acceleration of maturity of a promissory note. On or about November 30, 2020, Plaintiffs filed a Wrongful Foreclosure Petition against Defendants and sought State Court Injunction Against the pending December 1, 2020 foreclosure sale (see Exhibit A petition filed in state court). On December 1, 2020, Defendants conducted a foreclosure sale where they purported to foreclose a home equity mortgage on Plaintiffs' Texas homestead and sell the property to Defendant Bank of New York Mellon Trust Company, N.A., as Trustee on behalf of CWABS Asset-Backed Certificates Trust 2007-12. The notice to Plaintiffs of the foreclosure sale was defective in that Defendants mailed the notice to an undeliverable mailing address. Further, there were other technical and factual defects in the foreclosure sale which necessitate judicial intervention to return title ownership of the subject real property and improvements to Plaintiffs before resolving Defendants' other claims to compensation from Plaintiffs.

On or about December 14, 2020, Defendants removed the state court wrongful foreclosure lawsuit to the U.S. District Court for the Southern District of Texas, McAllen, Texas Division (see Exhibit B copy of removal notice).

On or about March 22, 2021, the Federal Court dismissed the case without prejudice due to pro se Plaintiffs failure to comply with technical orders of the Court (see copy Exhibit C copy

of dismissal).

IV. Relief

Plaintiffs seek judicial rescission of the wrongful foreclosure and to return title to the subject real estate to Plaintiffs. Further, plaintiffs seek an emergency temporary restraining order to prohibit Defendants from evicting Plaintiffs from their home during the pendency of this case, plaintiff's request that the Temporary Restraining Order be made a Temporary Injunction and that Plaintiffs recover from Defendants costs and attorney's fees.

V. Certification and Closing

I certify to the best of my knowledge, information and belief that this complaint: (1) is not being presented for an improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation; (2) is supported by existing law or by non-frivolous argument extending, modifying, or reversing existing law; (3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and (4) the complaint otherwise complies with the requirements of Rule 11.

Date of signing: 4/20//2022

/S/ Samuel C. Beale
Samuel C. Beale
SBN: 01952380
Southern District of Texas No.: 12491
5821 Southwest Freeway, Suite 416
Houston, Texas 77057
bealelawfirm@gmail.com
Telephone: (713) 333-0505
Facsimile: (281) 664-6423